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**TITLE 327 WATER POLLUTION CONTROL DIVISION****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #21-129

**SPILL REPORTING****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [327 IAC 2-6.1](#) concerning spill reporting. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [327 IAC 2-6.1](#).

**AUTHORITY:** [IC 13-14-8-7](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

The spill reporting provisions in [327 IAC 2-6.1](#), with certain exceptions, require the reporting of all spills of hazardous or objectionable substances to the soil or water from facilities and modes of transportation. The owner or operator of the source of the spill is required to contain the spill if possible, initiate a spill response, submit a spill report by telephone and in writing, and notify downstream water users and affected property owners.

The spill reporting requirements in [327 IAC 2-6.1](#) apply to the reporting, containment of, and response to spills of hazardous substances, extremely hazardous substances, petroleum, and objectionable substances that are of a quantity, type, duration, and in a location as to damage the waters of the state. These requirements have not been updated since 1997 and no longer reflect the technological advances and modern processes that are used by IDEM and the regulated community. In addition, the Above Ground Storage Tank Advisory Group, formed to review the rulemaking requirements under Senate Enrolled Act (SEA) 312 from 2015 and advise the agency and the Environmental Rules Board (ERB) on rulemaking strategies, recommended updating the spill reporting rules to enhance public water supply protection and information sharing in the event of a spill.

In this rulemaking, IDEM proposes to make revisions to update and make improvements to the spill reporting rule at [327 IAC 2-6.1](#). In addition, this rulemaking will clarify provisions, remove obsolete language, make corrections, and update language to conform to current rule writing standards. IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 327 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Update and make improvements to the spill reporting rule at [327 IAC 2-6.1](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? There are a number of federal requirements for containing and reporting spills, which are listed below. However, these rules are authorized under state statutes, [IC 13-14-8-7](#) and [IC 13-18-5](#).
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Make no changes to the spill reporting rule at [327 IAC 2-6.1](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

**Applicable Federal Law**

Risk management plans, 40 CFR 68.150 et seq.; Emergency Planning and Community Right-to-Know Act (EPCRA), 42 USC 11001 to 11050, and 40 CFR 300 to 372; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601 et seq. and 40 CFR 302 et seq.; oil spill prevention: Clean Water Act (CWA), 33 USC 1251 et seq. (1972) and Oil Pollution Act of 1990 (OPA), 33 USC 2701 to 2762; Spill Prevention, Control, and Countermeasure (SPCC) Plans: 40 CFR 112; Resource Conservation and Recovery Act (RCRA), 42 USC 6901 to 6992k; hazardous waste tanks: 40 CFR 260.10 and 40 CFR 264.190 to 264.200; used oil requirements: 40 CFR 279.54; transportation of hazardous liquids by pipeline: 49 CFR 195; and hazardous materials and special provisions: 49 CFR 172.

**Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. While the fiscal impact of potential amendments cannot be determined until the suggested amendments are drafted, it is anticipated that there would be minimal fiscal impact to updating reporting requirements under [327 IAC 2-6.1](#), given the nature of the rule.

Potential Fiscal Impact of Alternative 2. There would be no fiscal impact if the rule is not changed.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor  
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 233-0572 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Joseph Fagan  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 586-3807  
[jfagan@iedc.in.gov](mailto:jfagan@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous  
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8921 or (800) 451-6027  
[emoorhou@idem.in.gov](mailto:emoorhou@idem.in.gov)

### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Seth Engdahl, Rules Development Branch, Office of Legal Counsel at (317) 234-9535 or (800) 451-6027 (in Indiana).

### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #21-129 Spill Reporting  
Seth Engdahl  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By electronic mail to [sengdahl@idem.in.gov](mailto:sengdahl@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

Contact Karla Kindrick at [kkindric@idem.in.gov](mailto:kkindric@idem.in.gov) or (317) 232-8922 if another method of submitting comments

within the comment period is desired. Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

**COMMENT PERIOD DEADLINE**

All comments must be postmarked or time stamped not later than May 7, 2021.

Additional information regarding this action may be obtained from Seth Engdahl, Rules Development Branch, Office of Legal Counsel, [sengdahl@idem.in.gov](mailto:sengdahl@idem.in.gov), (317) 234-9535 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief  
Rules Development Branch  
Office of Legal Counsel

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An [html](#) version of this document.